(1)

Supreme Court, U.S.
FILED

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03 207 JUL 29 2003

No.

IN THE

SUPREME COURT OF THE UNITED STATES

ALEXANDER GEE, individual and on behalf of class person similarly situated,

Petitioners,

vs.

DONALD J. RAFFERTY; COHEN, TODD, KITE & STANFORD,LLL;PACHUSLSKI,ZIEHL & YOUNG, P.C.; F & C INTERNATIONAL, INC. And STAR BANK, N.A.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPPEALS FOR THE NINTH CIRCUIT

ALEXANDER GEE
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Fontana, California 92335
Phone: (9090 823-2329

Pro Se

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23 pp

QUESTION PRESENTED

I. Does the Star Bank attorney corruptly conspire with the district court judge dismiss complaint without a hearing and denied petitioner's timely filed request for default judgment constitute a denial of due process of law in violation of § 1 of the Fourteenth Amendment of the United States Constitution? If so, did the Appellate Panel's reviewed this case *de novo* when the Panel deprived petitioners' right to default judgment? If not, must petitioners' claim against respondents for the violation of the "RICO Acts " and the Civil Right Acts be admitted when not deny by the respondents in due process of law?

II. Is the en banc procedure prevent petitioner from requested the Panel not to exercise of the en banc power? If request is allow by procedure, must the judges disqualify and the case be reverse and remand?

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JURISDICTIONAL STATEMENT

The petitioner, Alexander Gee, respectfully prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit entered on 7 of May 2003.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 and § 1257(3). This petition is filed with 90 days of May 7, 2003.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISION

Determination of Cause by the Court in Banc

Rule 35(a) When Hearing or Rehearing in Banc Will be Ordered. A majority of circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

STATEMENT OF THE CASE

The Court of Appeals entered it Memorandum decision affirming the denial of Petitioners' petition on appeals without oral argument sought by petitioner. Thus, the Panel opinion based upon the Star Bank's untruthful brief is in conflict with the Ninth Circuit authority for violation of Rule 11, substantial monetary fines or disbarment. *See In Re Disciplinary Action of Carl,* 803 F 2d 1004 (9th Cir.

1986). A copy of the memorandum is attached as Appendix A-2.

On March 19, 2002, the United States District Court for the Central District of California terminated the case and return plaintiffs' opposition and vacates order and entering default judgment of February 27, 2002 as document discrepancies. The courts cannot *ex mero motu,* motion of the court is *coram non judice* and void. *See* page A-10.

On May 7, 2003, the Court of Appeals entered order dismisses petitioners' petition for rehearing and suggestion for rehearing en banc when all respondents are in default to answer conspiracy in obstruction of justice and with without en bank voting. In addition, the appellate decision was decided in way in conflict with applicable decisions for entering default judgment, See *Jackson v. Beach,* 626 F 2d 831 (App. D.C.). A copy of the memorandum is attached as Appendix A-2.

The memorandum is based on the misstatements of bankruptcy's denial of petitioner's filing priority claim against the respondent, Star Bank; filing opposition to the respondents' post finance agreement, and the filing opposition to any proposed plan of reorganization file in bankruptcy. The bankruptcy denials of petitioner's § 507 priority claim and/or opposition to any the any plan of reorganization is irrelevant when there are no bankruptcy denial of petitioners' right to receive the confirmed amended plan of reorganization in distribution, shareholders' equity and § 510(b) Claims.

On December 18, 2001, complaint filed against the respondents for denial of property interest, money held in trust-account that never paid, without due process of law. In addition, the complaint also against the respondents for the violation Title 28 U.S.C. § § 1981, 1983, 1985 of the Civil Right Act and the Title 18 U.S.C.S. § 1961 et seq. of 'RICO

Act", the Racketeering Influence and Corruption Organization Act with no response from all respondents.

Before Star Bank files his answer to complaint, Star Bank shopping for a judge in the absence of petitioner raises the issue of corruptly conspire in obstruction of justice to dismiss complaint [see appendix A-11 for false statements].

After Judge Lew declined transfer the case to his calendar on January 4, 2002 and Judge Wilson refused to dismiss complaint, the respondent, Donald J. Rafferty agreed with petitioner, a payment of $3,000.00 for "F & C" bankruptcy distribution plus interest and cost to that date with the respondent and "Star Bank" is not included in the settlement. Mr. Rafferty did not act in good faith on agreement is a conspiracy of obstruction of justice. Mr. Rafferty should be sanction.

On January 14, 2002, "Star Bank" attorney file motion to dismiss complaint and petitioner timely files his opposition motion, void his hearing date and served on Star Bank to produce record and document, change the hearing place to the Eastern Division of the district court, jurisdiction and venue stated in petitioners' complaint. In addition, "Star Bank's" motion to dismiss in whole or in part is a misrepresent evidence in argument before court, there are no Res Jundicata claim for Star Bank in confirmed plan of reorganization in distribution, "Star Bank's" attorneys have no affirmative defenses and did not answer complaint for violation the Civil Right Act and the "RICO Act", and cannot prove beyond doubt that petitioner has no set of claims entitled him to relief on confirmed distributions.

On March 8, 2002, petitioner timely file his opposition and vacate Judge Wilson's Order of February 27, 2002, and motion to enter default judgment against the default defendants and Judge Wilson order terminated the

case and return petitioner's motion as documentary discrepancy is an act of prejudicial to the administration of justice and a circumstance evidence of bribery.

On Appeals, petitioner's Reply Brief of August 26, 2002 with a copy of Bankruptcy Order of February 3, 1995 attached to controvert the "Star Bank's" brief on appeals of August 16, 2003 on claims of Res Judicata, subject-matter jurisdiction, and failure to state a claim are misrepresent argument before court. It is only appropriate for the Panel to sanction the respondents for misrepresented evidence before court with or without oral argument, Fed. Rules Civ. Proc. Rule 11, 28 U.S.C.A. and U.S. Ct. App. 9th Cir. Rule 5, 28 U.S.C.A.

WHY CERTIORARI SHOULD BE GRANTED

1. The Panel's MEMORANDUM filed on January 22, 2003 is open to review and for supervision of this Court.

Petitioners' suggested rehearing en banc involves questions of exceptional importance as matter of law on ground that the Panel's decisions on sanction, entering default judgment and effect of Failure to Deny by Star Bank in violation of the Civil Right Acts and the "RICO Act" are acts of conspiracy in obstruction of justice. In addition, the embezzlement of confirmed bankruptcy distribution in false pretenses is a violation Sections 182(4)(5) of the California Penal Code. Furthermore, the Panel knew and/or should known "Imposition of Sanction for filing a brief not well-ground in fact and not made after reasonable inquiry is mandatory" *In re Disciplinary Action Carl*, 803 F 2d 1004 (9th Cir. 1986).

It has ever been a tenet of due process in these courts the United States that a person 's property right may not be deprive without the due process of law. The Panel knew the Star Bank cannot prove beyond doubt petitioner has no set of claim which entitled him to relief and Star Bank's "argumentative conclusion of law were not admitted by motion to dismiss', *Lucking v. Delano* 122 F 2d. 21 (App. D.C.). Also, it is necessary and proper for Petitioners in his en banc procedure to suggesting proper judges for exercise of en power, § 144, 28 U.S.C.A. *See Western Pac. R. Corp. v. Western Pac R. Co.* 345 US 247, 73 S. Ct 656.

The Panel knew and/or should have known the Star Bank's experts of record and answering brief of August 16, 2002 are false statement of law or fact on ground that the denial of priority claim and the denial of petitioners' opposition to the motions in bankruptcy court are irrelevant against confirmed bankruptcy distribution. There is no Res Judicata, and/or mootness claim for money in client trust-account that the respondent never paid, nor have any reason to dismiss complaint for failure to state a claim in confirmed bankruptcy distribution here in the City of Fontana, State of California. *See Conley v. Gibson,* Tex 1958, S. Ct. 99. (Defendant must prove beyond doubt complainant has no set of claim which entitled him to relief).

Petitioners' brief for oral argument setting forth the reasons why oral argument should be heard against Star Bank for violation of Rule 11, and the Panel "deny petitioner an opportunity to present competent proof against the respondent constitutes a violation of a fair trial and of due process", *See Clack v. Reid,* 441 F. 2d 901, 904 (5th Cir. 1971)

The Panel's Memorandum of January 22, 2003 in favor of Star Bank and against petitioners is conspiracy act of

abuses the legal system in aiding and abetting criminal.

Petitioners' Petition for Rehearing En Banc filed February 1, 2003 demand attorney and judicial accountability. It is exceptional important against attorney conspiracy of obstruction of justice.

2. Entering Default Judgment is open to review by this Court for uniformity and due process right.

Default judgment involves a property protected by § 1 of the federal constitution's Fourteen Amendment. The Panel's denial of Petitioners' default judgment was decided in a way conflict with *Jackson v. Beach*, 636 F.2d 831, 205 U.S. App. D.C. 84, "Once a defendant fails to file a responsive answer, he is in default, and entry of default may be made by either the clerk or judge". Accordingly, petitioners' right to default judgment, F.R.C.P. Rule 55(c), is a due process.

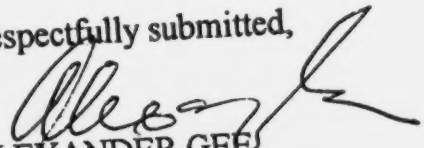
The Panel affirmed district court dismissal when Star Bank and all respondents who are in default to file responsive answer to en banc rehearing against them for the violation of the "RICO" act and the Civil Right Act must admit when not deny. "The right to procedural due process is 'absolute' in the sense it does not depend on the merits of claimant's substantive assertion" *Carey v. Phiphus*, 435 U.S. 247, 266; and The resolution of constitutional question in appeal does not rely on misstatement of the respondents but on record and pleading. Petitioners' brief for en banc rehearing is adequate for the judges to review misstatement of Star Bank's answering brief on appeal. The Panel's memorandum constitute,a conspiracy act aiding and abetting the respondents for willful violation of the confirmed plan of reorganization distribution here in the City of Fontana, State of California. Accordingly, the Panel based upon misconception of the law closed the appeal should reverse

and remanded. *Western Pac. Rail Corp. v. Western Pac. R. Co.*73 S. Ct. 656, 345 U.S. 247, 97 L. Ed. 986 and the respondent should be disbarring from practice before court for violation of F.R.C. P Rule 11 in putting false evidence before court. *See* Petitioner's footnote of Judge Wilson's Order of February 27, 2002, page A 4-9, for false statements.

CONCLUSION

For the reasons stated, petitioner urges that a writ of certiorari issue to review and to vacate the opinion and order of the Panel of the Ninth Circuit Court of Appeals and remand the case for a jury trial in the Eastern Division of the United States District Court for Central District of California.

Respectfully submitted,



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FILED
MAY 07 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OFAPPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALEXANDER GEE,
Plaintiff-appellant,

v.

DONALD J. RAFFERTY; et al.,
Defendants,
And
STAR BANK N A, Nominal defendants,

Defendant-Appellee.

No. 02-55631

DC# CV-01-10907-SVW

ORDER

Before: BEZER, KLEIFELD, and PAEZ, Circuit Judge

The panel has voted to deny appellant's petition for panel rehearing.

The full court has been advised of petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed R. App. P. 35.

The petition for panel rehearing and the petitioner for rehearing en banc are denied.

No further filing will be accepted in this closed appeal.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALEXANDER GEE,
Plaintiff-Appellant,

No. 02-55631
D.C. No. CV-01-10907-SVW

v.

DONALD J. RAFFERTY; et al.,
Defendants,
and,
STAR BANK N.A.
Nominal defendants

Defendant-Appellee.

MEMORANDUM*

Appeals from United States District Court
For the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted January 13, 2003**

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision with out oral argument. *See* Fed R.App. P34(a)(2). Accordingly, we deny Gee's request for oral argument.

Before: BEEZER, KLEINFELD, and PAEZ, Circuit Judges.

Alexander Gee appeals pro se the district court's judgment dismissing the class action, which alleged a bankruptcy court's judge's order in a prior action violated due process. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Wyler Summit P'ship v. Turner Broad. Sys. Inc.* 135 F 3d 658, 661 (9th Cir. 1998), we affirm for the reasons stated by the district court.

AFFIRMED.

FILED
JAN 22, 2003
CATHY A. CATERSON
CLERK, U.S. COURT OF APPEALS

FILED
FEB 27 2002
CLERK U S DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV – 01-10907-SWV (Max) ALEXANDER GEE, et al. v. DONAL J. RAFFERTY, et. al.

I. INTRODUCTION

Plaintiff, filing in pro per, has asserted a class action for "denial of property without due process." The action is related to a bankruptcy proceeding of F & C International, Inc. ("F&C") in the United States Bankruptcy Court in the Southern District of Ohio. Defendant Star Bank has filed a motion to dismiss for lack of subject matter jurisdiction and res judicate, among reasons. Plaintiff has filed an opposition to this motion.

This matter came before this Court for hearing on February 11, 2002. Plaintiff did not make an appearance of Defendant's motion notice of hearing by virtue of Defendant's motion.[5]

As set forth below, Defendant's motion to dismiss is GRANTED.

II FACTURAL BACKGROUND

Petitioner's Footnote

[5] Petitioner voided the hearing on ground Star Bank motion violated the venue of the Eastern Division of the Court and due process for defendant failed to produce record and document

From his complaint, it appears that Plaintiff was a shareholder of F &C with an interest total $1,460. According to the docket from Bankruptcy Petition No. 93-11688, the following is the applicable time lines:

April 1993: F&C filed. a Chapter 11 Bankruptcy case in United States Bankruptcy Court in Southern District of Ohio (the Bankruptcy Court").

February 3, 1994: F&C filed Motion for Disallowance of Proof of shareholders (the Disallowance Motion")

February 14, 1994, Plaintiff filed a "reply" to Disallowance Motion".

March 15, 19994: Bankruptcy Court issued Order Granting Disallowance Motion (the "Disallowance Order").

August 26, 1994: Plaintiff filled Motion to Vacate/Reconsider Order.

November 9, 1994: Bankruptcy Court denied Plaintiff's Motion.

November 18, 1994: Plaintiff file Second Motion to vacate/Reconsider Order.

December 21, 1994 Bankruptcy Court Denied Plaintiff's Second Motion.

January 9, 1995: Plaintiff filed Third Motion to Vacate/Reconsideration.

February 3, 1995: Bankruptcy Court Denied Plaintiff's Third Motion[6].

February 13, 1995: Plaintiff filed Fourth Motion to Vacate/Reconsider Order.

Footnote by Petitioner

[6] No bankruptcy court order deny petitioner's confirmed equity interest with § 510(b) claims and Bankruptcy Order of February 3, 1995 denied § 505(a)(2) priority claim is irrelevant to confirmed distribution. Donald J. Rafferty, opponent of priority claim, is in default answering complaint

November 17, 2000: Trustee filed Motion for Entry of Final Decree.
December 1, 2000: Plaintiff filed Opposition to Motion for Entry of Final Decree.
December 28, 2000: Bankruptcy Court issued Order Denying Plaintiff's Opposition.
December 29, 2000: Final Decree Entered and Case ordered closed.
December 10: 2000: Plaintiff filed Motion to Vacate Final Decree Order.
February 26, 2001: Bankruptcy Court issued Order Denying Plaintiff's Motion.
December 18, 2001: Plaintiff filed present complaint in the United States District Court, Central District of California

From the record, it appears that none of the order by the Bankruptcy Court have been appeals by Plaintiff[7]

III. ANALYSIS

A. Res Judicate

The case before this Court is barred under the doctrine of res judicata, because there was no appeal made on any of the Bankruptcy Court orders, and this action constitutes a collateral attack on a final appealable order of Bankruptcy Court. See Celotex Corp. v. Edwards, 514 U.S. 300, 313, 115 s. Ct. 1493, 1501, 131 L. Ed. 403 (1995) (holding that injunction issued by bankruptcy court under 11 U.S.C. § 105 could not be attached in federal district court except on appeal of bankruptcy court order).[8]

Petitioner's Footnote:

[7] No appeal is necessary for confirmed Plan of reorganization distribution on ground denial of priority claims is irrelevant to § 510(b) claim.

[8] *See* Daniel DiSebastian's opposition bankruptcy filing of November 5, 1993. § 105 raise in bankruptcy court.

Pursuant to 11 U.S.C. Sections 1141(a), Plaintiff is bound by the confirmed Chapter 11 plan of reorganization. If Plaintiff desired to challenge any aspect of that plan, he was permitted, and, more significantly, required to appeal the Confirmation Order in the proper appellate jurisdiction. See Trulis v. Barton, 107 F 3d 685 691 (9th Cir. 1995) ("Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to res judicata effect . . . . Since the plaintiffs never appeals the bankruptcy court's confirmation order, the order is a final judgment and plaintiffs cannot challenge the bankruptcy court's jurisdiction over subject.").

Clearly, the claims Plaintiff makes before this Court could have and should have been raised before Bankruptcy Court. In fact, appear that Plaintiff did raise these claims, and they were subsequently denied. However, Plaintiff chose not to appeal the confirmation Order, the Disallowance Order, or any of the orders denying Plaintiff's many motions for reconsiderations. These orders all constitute final judgments, and are entitled to res judicate effect. See Siegel v. Federal Home Loan Mortgage Corp., 143 F. 3d 525, 529-30 (9th Cir. 1998) (holding that a bankruptcy court's allowance or disallowance of a claim is final judgment).

Therefore, the doctrine of res judicate prohibits Plaintiff from attacking the final decision of the Bankruptcy Court through an action this Court, and thus Plaintiff's claim must be dismissed.

B. Lack of Subject Matter Jurisdiction (Mootness)

Defendant also contends that this case be dismiss for lack of subject matter jurisdiction, because the Plan of reorganization has been substantially consummated and

bankruptcy case is now close. Thus, Plaintiff's complain is effectively moot, because there is no meaningful relief that this Court could grant.

In Onouli-Kona Co. v. Estate of Richards, 846 F. 2d 1170 (9th Cir. 1988), the Ninth Circuit recognized that "Bankruptcy's mootness rule 'developed from the general rule that the occurrence of events which prevent an appellate court from grating effective relief renders an appeal moot, and the particular need for finality in orders regarding stays in bankruptcy.'" Id., at 1172 (citation omitted). The court further held that "bankruptcy's mootness rule applies when an appellant has failed to obtain a stay from an order that permits a sale of debtor's assets. Whether an order directly approves the sale or simply lifts the automatic stay, the mootness rule dictates that appellant's failure to obtain a stay moots the appeal." Id., at 1171.

In the present case, Plaintiff is arguing that the Debtor should have paid Plaintiff his share of $1,460 from bankruptcy estate. However, the bankruptcy case is now closed and the reorganization plan has been in effect since march of 1994. Thus, since the plan as been substantially consummated, and Plaintiff has not sought nor been granted a stay of sale of debtor's assets, there is no means by which this Court could afford Plaintiff relief even if he was so entitled. Therefore, based on bankruptcy's mootness rule, this action must also be dismissed as moot. See Arnold & Baker Farms v. United States, 85 F. 3d 1415, 1419 (9th Cir. 1996) (holding that if a party opposing a reorganization plan has failed to obtain a stay pending appeal, and the plan has been substantially implemented, a court can dismiss the appeal as moot).

C. Improper Appearance Before Court

Finally, this action must also be dismissed on the additional ground that a pro se plaintiff may not be properly

represent a class of similarly-situated persons. In the Complaint, Plaintiff seeks to pursue a class remedy for "all persons who had been harmed by Defendants' violation of bankruptcy . . ." Complaint, at ¶ 7. However, under Local Rule 83-2.1, "An appearance before the Court on behalf of another party or a class may be made only by an attorney admitted to the Bar of or permitted to practice before this Court." Since Plaintiff is filing in pro per, and is not an attorney permitted to practice before this Court, this class action must be dismissed on the additional ground that Plaintiff's appearance before this Court on behalf of a class is prohibited by the local rules for Central District of California.

IV CONCLUSION

Based on the above discussion, Defendant's motion to dismiss is GRANTED. All claims are hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDER.

DATED: 2/27/02

/s/ Stephen V. Wilson
STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

A-10

UNITED STATES DISTRICT COUURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

To: ■ U.S. DISTRICT JUDGE WILSON
FROM J Homes , Deputy Clerk RECEIVED DATE 3/12/02
CASE NO CV 01-10907-SWV
CASE TITLE Gee v. Rafferty
DOCMENT ENTITLED: PLTF'S Oppos and Vacate Order
Upon the submission of attached documents(s), it was noted that the following discrepancies exist:

X OTHER CASE TERMINATED.

ORDER OF THE JUDGE

IT IS HEREBY ORDERED:

■ The document is NOT to be filed, but instead REJECTED, and is ORDER returned to *Counsel shall immediately notify, in writing, all parties previously served with the attached document that said document have not filed with Court.

Dated: 3/19/02 /S/ Stephen v. Wilson
U.S. DISTRICT JUDGE

A-11

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Alexander Gee, etc.

PLAINTIFF(S),

Donald J. Rafferty; et al
DEFAENDANTS

CASE NUMBER CV 01-10907 SVW (Mcx)

ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224
(Related Case)

CONSENT

II IS HEREBY ORDERED that this case is transferred to calendar of Judge Lew for all further proceedings.

Stephen V Wilson
United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to/from my calendar for reasons set forth: Plaintiff's actions do not arise from same transaction and they do not involve the same defendants

Dated: 1-4-02

/s/ Ronald S.W. Lew
United States District Judge

REASON FOR TRANSFER AS INDICATED BY COUNSEL:
CA 97-5689 RSWL (CTx) and the present case:

■A appear to arise from the same or substantially identical transactions, happening or events.

■D. call for determination of the same substantial identical question of law.

■E. likely for all reasons may entail unnecessary duplication of labor if heard by different judges.